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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,169	05/10/2007	Xavier Couillens	1022702-000323	5100
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EXAMINER				
KOLLAS, ALEXANDER C				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
05/12/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary

Application No.

10/583,169

Applicant(s)

COUILLENS ET AL.

Examiner

ALEXANDER C. KOLLIAS

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 & 20-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. All outstanding claims objections and 35 USC 112, 2nd paragraph rejections are withdrawn in light of applicant's amendment filed on 1/29/2009.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. No new grounds of rejection are set forth below. Thus, the following action is properly made final.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 15, 20-26, and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al (US 6,255,371) in view of Flipppo et al (US 2001/0008913).

The rejection is adequately set forth in paragraph 5 of the Office Action mailed on 10/29/2008 and is incorporated here by reference.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al (US 6,255,371) in view of Flipppo et al (US 2001/0008913) as applied to claims 15, 20-26, and 28-32 above and in view of Hanabusa et al (US 6,433,045).

The rejection is adequately set forth in paragraph 6 of the Office Action mailed on 10/29/2008 and is incorporated here by reference.

Response to Arguments

7. Applicant's arguments filed 1/29/2008 have been fully considered but they are not persuasive.

8. Applicant argues that the amounts of melam disclosed by Schlosser cannot be combined with the flame retardant composition disclosed by Schlosser. However, it is significant to note that Schlosser already teaches a mixture of the compounds F1, F2, and F3. the only difference being that Schlosser does not disclose that amount of F3. It would have been obvious to one of ordinary skill in the art to look to Flippo which is drawn to a flame retardant glass reinforced polyamide composition, in order to determine that amount of F3 to be utilized in the flame retardant composition of Schlosser. Applicant argues that the flame retardant of Flippo would not be utilized in compositions comprising "complicated melamine compounds". However, Flippo is not used to teach Fe into Schlosser, given that Schlosser already teaches compounds encompassed by F3, rather Flippo is used to teach amounts of F3. However, note that while Flippo does not disclose all the features of the present claimed invention, the reference is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, namely the amount of melamine condensation derivative,

and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

9. Applicant's argument regarding unexpected results as to fire-retardant composition is not found to be convincing for the following reasons. In Table 1 of the Specification Composition A is the comparative example while **Embodiments 1-4** are the inventive examples. Although Applicant argues unexpected results regarding that fact that Composition A passed the GWFT test at 960 degrees C but failed GWFT test at 775 degrees, while Inventive Examples 1-4 passed both GWFT tests, the following differences are noted in the composition which render Applicant's argument unconvincing:

- a. Regarding the amount of polyamide (PA) Composition a comprises 51.5 wt %, while Inventive Examples 1-4 comprise varying amounts of PA, specifically 46.5 wt %, 50 wt %, 47 wt % and 46.5 wt %.
- b. Composition A comprises 6 wt % F2, while inventive Examples 2-3 comprise 6.5 wt % and 5 wt % respectively.
- c. Composition A comprises 11.5 wt % F1 which compositions 2-3 comprises 12.5 wt % and 10 wt % of F2, respectively.
- d. Composition A comprises 0.5 wt % wt while inventive example 4 comprises 0 wt % ZB.

For the reasons stated above (a-d), the comparison of composition A to inventive Examples 1-4 is not a valid side-by-side comparison. It is noted that as set forth in MPEP 716.02(d), whether

unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support". In other words, the showing of unexpected results must be reviewed to see if the results occurred over the entire claimed range, *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). Applicants have not provided data to show that the unexpected results do in fact occur over the entire claimed range of the following compounds:

- a. It is noted that while inventive examples 1-4 comprise at least 13 wt % of compounds F1 and F2, a currently recited in claim 1, claim 1 recites that the composition comprises from 1 to 30 wt % of F1, 1 to 20 wt % of F2, and 0.1 to 20 wt% of F3.

Inventive Examples 1-4 in Table 1 comprise 11.0 wt % to 12 wt % of F1, 5 wt % to 6.5 wt % of F2, and 1 wt % to 7 wt % of F3.

Claim 15 presently recites a flame retardant system comprising the compound (F1) which comprises the metal calcium, magnesium, aluminum or zinc. The compound (F2) is a reaction product between phosphoric acid and melamine and/or a reaction product between phosphoric acid and a melamine derivative, and the compound (F3) is a melamine condensation derivative. However, the inventive examples comprise specific compound F1-F3, i.e., the compound (F1) where the metal is aluminum, (F2) which is melamine polyphosphate and (F3) which melem. Therefore, the inventive examples are not commensurate with the scope of claim 15.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEXANDER C. KOLLIAS whose telephone number is (571)-270-3869. The examiner can normally be reached on Monday-Friday, 8:00 AM -5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. C. K./
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796